

## **MINUTES**

### **MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIRMAN LORENTS GROSFIELD**, on March 29, 2001  
at 8:30 A.M., in Room 303 Capitol, then turned it over to  
**SEN. DUANE GRIMES.**

#### **ROLL CALL**

**Members Present:**

Sen. Lorents Grosfield, Chairman (R)  
Sen. Duane Grimes, Vice Chairman (R)  
Sen. Al Bishop (R)  
Sen. Steve Doherty (D)  
Sen. Mike Halligan (D)  
Sen. Ric Holden (R)  
Sen. Walter McNutt (R)  
Sen. Jerry O'Neil (R)  
Sen. Gerald Pease (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Anne Felstet, Committee Secretary  
Valencia Lane, Legislative Branch

**Please Note:** These are summary minutes. Testimony and  
discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted:  
Executive Action: HB 313

**EXECUTIVE ACTION ON HB 313**

**Motion:** SEN. HOLDEN moved that **AMENDMENTS HB031302.av1 BE ADOPTED.**

**Discussion:**

**SEN. RIC HOLDEN** explained these amendments were prepared by the Mental Health Coalition.

**Valencia Lane, Legislative Staffer,** understood the House Judiciary committee missed a few references when they amended the bill. Therefore, these amendments cleaned that up.

**Mary McCue, MT Health Council Association,** addressed the amendment. Section 1 of the original draft contained definitions. It defined certified domestic violence counselor and certified facilitator. The House amended it to remove those concepts, but the amendments only removed the word, "certified". It left in the concept of domestic violence counselor and facilitator. The purpose of the amendments was to eliminate those concepts entirely. They did not want to create new categories that were not defined. She understood that the sponsor and primary proponents to the bill did not object to the amendments.

**SEN. DUANE GRIMES** asked who currently was subject to the 25 hours.

**Ms. McCue** replied psychologists, licensed professional counselors, social workers; anybody who within their training had the background and education to do this type of counseling.

**SEN. GRIMES** wondered if some people were better skilled/equipped than others to handle domestic violence issues.

**Ms. McCue** agreed and felt that it applied to any kind of counseling. She likened it to the legal profession where some were better in one area than another and were charged with determining if they were capable of providing the specific service to a client.

**SEN. GRIMES** suggested that some victims of domestic violence had gone to counselors that had not worked, but were able to find another one who worked. He felt this change needed to be made, although, he wanted to retain the idea that these people knew how to deal with the issues. He clarified that retaining this language required new training and certification.

**Ms. McCue** said she was concerned because the definitions had been removed. Therefore, it could imply that these were some sort of special category of counselor. They urged those decisions be left with licensure boards because they had the rule-making authority to adopt rules to set some standards for different kinds of counseling. For example, the Board of Psychologists was in the process of adopting a rule to set standards for people who were doing child custody evaluations. They were doing this based on feedback. They urged the committee to let the boards deal with the professions.

**SEN. GRIMES** questioned the possibility of removing domestic violence, but inserting counselor services experienced in domestic abuse. This would give guidance to ensure it would work. He felt this profession demanded experience.

**Ms. Lane** clarified that by doing that, it revisited the original bill. However, the House amended the bill to remove what he proposed.

**Colleen Murphy, MT National Association of Social Workers**, said all licensed professional mental health persons had a duty to not practice beyond their scope of practice. Therefore, it was incumbent upon the professional to not practice beyond their scope. If they didn't know anything about the issue, they had no business running the groups.

**SEN. JERRY O'NEIL** cautioned that this was working with people's minds and not logic. It could happen that experienced counselors didn't help an individual, but another counselor could. Therefore, he didn't think it was a good idea to close the door to more counselors by specifying which counselors were available. That made it so people might not have anyone to go to for help.

**Vote:** Motion to adopt HB031302.av1 amendments carried 8-0, **SEN. GROSFIELD** excused.

**Motion:** **SEN. HOLDEN** moved that **AMENDMENTS HB031301 #1 AND #2 ONLY BE ADOPTED.**

**Discussion:**

**SEN. HOLDEN** referred to the bill on page 10, lines 25 and 26. He felt it was more broad than what they wanted to do. If someone was going to jail and do other treatment counseling with fines and penalties, then the first four criteria would address the issue adequately.

**SEN. MIKE HALLIGAN** said the motion was a good idea to potentially not involve a kid whom the judge might think would need to testify to find out whether the child was within hearing or vision. However, in most cases, an adult would be asked if children were in the house and aware of the incident. Although, when a person showed disregard in front of children, it indicated a new level of disregard for the marital relationship as well as the children. He felt the domestic violence counselor would ask whether the abuse occurred in front of the children, and it was an important factor. However, it might not be necessary to put in statute.

**SEN. GRIMES** read a excerpt by Judy Weng regarding the issue. It argued it was not a good idea to force a child to testify against a parent if the child would be returned to the home of that parent. He asked if the language required the child to testify. He didn't think it did.

**SEN. HALLIGAN** agreed that it didn't require the child to testify, unless a witness couldn't testify to whether a child might have heard the violence. He said the hearing part was troublesome.

**SEN. O'NEIL** agreed with **SEN. HOLDEN** because of the ability to prove it. It was too tenuous, so would be better to strike.

**SEN. GRIMES** suggested changing the word "shall" to "may" on line 25 to make it discretionary on the part of the court.

**Ms. Lane** replied it had the effect of changing it from mandatory to discretionary. However, it didn't address the issue **SEN. HALLIGAN** and **SEN. O'NEIL** spoke to in terms of enhancing sentences. By enhancing the sentences it would have to be pleaded and proven. She also pointed out the use of the "aggravating factor" had no well-known meaning in criminal law. In criminal law, the only place that "aggravating factors" were considered was in the death sentence penalty statutes. Not only the problems discussed were present, but "aggravating factors" further confused the issue.

**Vote:** Motion to adopt #1 & #2 of HB031301.avl carried 7-1 with Doherty voting no. **SEN. GROSFIELD** excused.

**Motion:** **SEN. HOLDEN** moved HB031301.avl #3 & #4.

**Discussion:**

**SEN. HOLDEN** said these amendments returned the standard to current law. On page 11, the Department and others wanted to increase it to 40 hours of counseling. He argued it was a major

flaw because those in the field already had problems with the statutory limit of 25 hours. He talked to domestic abuse counselors in the field who said they didn't have the personnel or time to do 25 hours of compliance as it was. Increasing it to 40 would not get done. He pointed out he asked that question of **Pam Bucy, Assistant Attorney General**, during the hearing and she replied, "they're very lucky to get 25 hours done in a year." Therefore, two sources said 25 hours was already difficult enough. He proposed the bill should be passed out, but the current standard of 25 should remain.

**SEN. GRIMES** said that was troubling, but he felt the bill was about these hours. He was approached to carry the bill and they said the argument was to increase counseling because the current level was not working. He said it made sense to him, and it was the genesis of the bill.

**SEN. O'NEIL** recalled testimony stating that no studies in the U.S. showed that 40 hours of counseling worked better than 25 hours of counseling. Also, the courts currently had the power to order 40 hours of counseling. Based on the results of judges ordering that amount, maybe next session the hours could be addressed. However, it was shown that 25 hours of counseling did have an impact on the attendee in terms of them realizing they were responsible for the acts he/she took.

**SEN. GRIMES** asked **Ms. Murphy** if the language "up to 40 hours" could be used and its effect.

**Ms. Murphy** replied this idea came from the other group. Members of her organization had concerns about the 40 hours based on what **SEN. HOLDEN** pointed out. Unfortunately, this was a problem that no one knew quite how to fix. She believed a judge was not limited to only one 25 hours; 25 hours was the minimum. Therefore, the courts could authorize as much counseling as they deemed necessary. **SEN. HALLIGAN** agreed. She noted the sponsor of the bill wanted the minimum raised to 40.

**Vote:** Motion to adopt #3 and #4 of HB031301.av1 carried 5-3 with Doherty, Grimes, and Pease voting no.

**Motion/Vote:** **SEN. O'NEIL** moved that HB 313 BE TABLED. Motion failed 2-6 with Holden and O'Neil voting aye.

**Motion/Vote:** **SEN. HALLIGAN** moved that HB 313 BE CONCURRED IN AS AMENDED. Motion carried 7-1 with O'Neil voting no, **SEN. GROSFIELD** excused. **SEN. GRIMES** would carry the bill on the Senate Floor.

**ADJOURNMENT**

Adjournment: 9:05 A.M.

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SEN. DUANE GRIMES, Vice Chairman

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ANNE FELSTET, Secretary

LG/AFCT

**EXHIBIT** (jus71aad)